

9-114A019

BAKER, BROWN, SHARMAN & PARKER  
A PARTNERSHIP OF INDIVIDUALS AND PROFESSIONAL CORPORATIONS

ATTORNEYS

CITICORP CENTER

1200 SMITH, SUITE 3600

HOUSTON, TEXAS 77002

April 13<sup>TH</sup>, 1989

WRITER'S DIRECT DIAL NUMBER

TELEPHONE (713) 654-8111

TELEX 762063

TELECOPIER (713) 654-1871

16304  
RECORDATION NO. FILED 1423

APR 24 1989 - 11 20 AM

INTERSTATE COMMERCE COMMISSION

4/24/89  
13

Secretary  
Interstate Commerce Commission  
12th Street at Constitution Ave. N.W.  
Washington, D.C. 20423

Dear Secretary:

I have enclosed an original and one copy/counterpart of the document(s) described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

13<sup>TH</sup> This document is a mortgage, a primary document, dated April 13, 1989.

The names and addresses of the parties to the documents are as follows:

Vendor: Southern Pacific Transportation Company  
Room 977, Southern Pacific Building  
One Market Plaza  
San Francisco, California 94105

Vendee and  
Mortgagor: George Hedge Contractors, Inc.  
536 Keith Street  
Pasadena, Texas 77504

Mortgagee: Texas Commerce Bank National Association  
3933 Fairmont Parkway  
Pasadena, Texas 77504

A description of the equipment covered by the document follows:

One Locomotive - Serial No. SP 1337

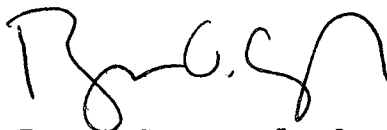
A fee of \$20.00 is enclosed.

APR 24 11 20 AM '89  
MOTOR OPERATING UNIT

BAKER, BROWN, SHARMAN & PARKER

Please return the original and any extra copies not needed by the Commission for recordation to Mr. Bill Waltermann, Texas Commerce Bank National Association, 3933 Fairmont Parkway, Pasadena, Texas 77504.

Very truly yours,

A handwritten signature in black ink, appearing to read "B.G. Crawford". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Bruce G. Crawford

0489010!.059/bcraw/frm

Interstate Commerce Commission  
Washington, D.C. 20423

4.27.89

OFFICE OF THE SECRETARY

Bruce G. Crawford  
Baker, Brown, Sharman & Parker  
Citicorp Center  
1200 Smith Suite 3600  
Houston, Texas 77002

Dear: Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4.24.89 , at 11:20am , and assigned recordation number(s). 16304

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

TEXAS COMMERCE BANK NATIONAL ASSOCIATION  
SECURITY AGREEMENT - EQUIPMENT

16304

RECORDING NO. \_\_\_\_\_

APR 24 1989 - 11 20 AM

George Hedge Contractors, Inc.

hereinafter called "Debtor," and  
712 MAIN

TEXAS COMMERCE BANK NATIONAL ASSOCIATION  
P. O. BOX 2558

HOUSTON, HARRIS COUNTY, TEXAS

77252 - 2558

INTERSTATE COMMERCE COMMISSION

hereinafter called "Secured Party," agree as follows:

SECTION I. CREATION OF SECURITY INTEREST.

In order to secure the prompt and unconditional payment of the indebtedness herein referred to and the performance of the obligations, covenants, agreements and undertakings of Debtor herein described, Debtor hereby grants to Secured Party a security interest in all goods, equipment, machinery, furnishings, fixtures, furniture, appliances, accessories, leasehold improvements, chattels and other articles of personal property of whatever nature now owned by Debtor or hereafter acquired, all accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing (hereinafter collectively called "the Collateral") and all proceeds of the Collateral. If, and only if, this box ~~XX~~ is checked, the Collateral shall be solely that equipment described on the reverse hereof under Collateral Description, together with accessions and appurtenances thereto and proceeds thereof. The inclusion of proceeds does not authorize Debtor to sell, dispose of or otherwise use the Collateral in any manner not authorized herein.

SECTION II. SECURED INDEBTEDNESS.

This Security Agreement-Equipment (hereinafter called this "Agreement") is made to secure and enforce the payment and performance of all debts, obligations and liabilities of every kind and character of Debtor now or hereafter existing in favor of Secured Party whether such debts, obligations or liabilities be direct or indirect, primary or secondary, joint or several, fixed or contingent, and whether originally payable to Secured Party or to a third party and subsequently acquired by Secured Party and whether such debts, obligations or liabilities are evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise, it being contemplated that Debtor may hereafter become indebted to Secured Party in further sum or sums, and all modifications, renewals or extensions of or substitutions for, any of the foregoing. All such indebtedness is hereinafter sometimes called the "secured indebtedness" or the "indebtedness secured hereby."

SECTION III. DEBTOR'S REPRESENTATIONS AND WARRANTIES.

Debtor represents, warrants and covenants that Debtor's location is the address stated at the beginning of this Agreement; that Debtor is now in a solvent condition; that no bankruptcy or insolvency proceedings are pending or contemplated by or against Debtor; that all information, reports, statements and other data furnished by Debtor to Secured Party prior to, contemporaneously with or subsequent to the execution of this Agreement or in connection with the indebtedness secured hereby are and shall be true, correct and complete and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading; that Debtor is the lawful owner of good and marketable title to the Collateral and has good right and authority to grant a security interest in the Collateral; that the Collateral is free and clear from all security interests and encumbrances except the security interest evidenced hereby; that there is no financing statement covering the Collateral or its proceeds on file in any public office; that the Collateral and the intended use thereof by Debtor comply with all applicable laws, rules and regulations; that the Collateral is free from damage caused by fire or other casualty; that this Agreement constitutes the legal, valid and binding obligation of Debtor enforceable against Debtor in accordance with its terms; that the execution, delivery and performance of this Agreement does not and will not contravene or violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect and applicable to Debtor or result in a breach of or constitute a default (with or without the giving of notice or the lapse of time or both) under any indenture or any loan, credit or other agreement to which Debtor is a party or by which Debtor may be bound or affected; that the execution, delivery and performance of this Agreement does not require the consent or approval of any person, including, without limitation, any regulatory body or governmental authority; and that Debtor will warrant and forever defend the title to the Collateral and its proceeds against the claims and demands of all persons whomsoever claiming or to claim the same or any part thereof.

SECTION IV. COVENANTS.

4.1. So long as the indebtedness secured hereby or any part thereof remains unpaid, Debtor covenants and agrees with Secured Party as follows:

(a) Debtor shall make prompt payment, as the same becomes due, of all indebtedness secured hereby in accordance with the terms and provisions of the agreements evidencing such indebtedness.

(b) If Debtor is a corporation, Debtor will continuously maintain Debtor's corporate existence.

(c) Debtor will cause the Collateral to be maintained and operated in a good and workmanlike manner and in accordance with all applicable laws and rules, regulations and orders promulgated by all duly constituted authorities. Debtor will not use, or allow the use of, the Collateral in any manner which constitutes a public or private nuisance or which makes void, voidable or cancellable, or increases the premium of, any insurance then in force with respect thereto. Debtor will not do or suffer to be done any act whereby the value of any part of the Collateral may be lessened. Debtor will allow Secured Party or its authorized representative to inspect the Collateral and Debtor's books and records pertaining thereto and Debtor will assist Secured Party or said representative in whatever way necessary to make such inspection. If Debtor receives notice from any federal, state or other governmental entity that the Collateral is not in compliance with any applicable law, rule, regulation or order, Debtor will promptly furnish a copy of such notice to Secured Party.

(d) Debtor will cause all debts and liabilities of any character, including without limitation all debts and liabilities for labor, material and equipment, incurred in the installation, maintenance and operation of the Collateral to be promptly paid.

(e) Debtor will cause to be paid prior to delinquency all taxes, charges, liens and assessments heretofore or hereafter levied or assessed against the Collateral, or any part thereof, or against the Secured Party for or on account of the indebtedness secured hereby or the interest created by this Agreement, and will furnish Secured Party with receipts or other satisfactory evidence showing payment of such taxes and assessments at least ten (10) days prior to the applicable default date therefor.

(f) Debtor will keep the Collateral in good order, repair and operating condition, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow the Collateral to be misused, abused or wasted, or to deteriorate, except for the ordinary wear and tear of its intended primary use. Debtor will promptly replace all worn-out or obsolete fixtures or personal property covered by this Agreement with fixtures or personal property comparable to the replaced fixtures or personal property when new.

(g) Debtor will keep the Collateral insured in an amount equal to the full insurable value thereof against loss or damage by fire, theft, collision and other hazards as may be required by Secured Party by policies of fire, extended coverage and other insurance in such company or companies, in such amounts, upon such terms and provisions, and with such endorsement, all as may be acceptable to Secured Party. Such insurance policies shall also contain a standard mortgagee's endorsement providing for payment of any loss to Secured Party. All policies of insurance shall provide for ten (10) days written minimum cancellation notice to Secured Party. All drafts or instruments of any kind evidencing payment under any such insurance policies which come into the possession of Debtor shall be immediately delivered to Secured Party. No such policies shall be payable to any party other than Secured Party and Debtor. Debtor shall furnish Secured Party with certificates or other evidence satisfactory to Secured Party of compliance with the foregoing insurance provisions. Duplicate originals of all policies, verifications, binders and cover notes covering any of the Collateral shall be delivered to Secured Party upon demand. Secured Party may act as attorney for Debtor in obtaining, adjusting, settling and cancelling such insurance and endorsing any drafts drawn by insurers of the Collateral. Secured Party may apply any proceeds of such insurance which may be received by it in payment on account of the obligations secured hereby, whether due or not.

(h) If the Collateral is or is to be wholly or partly affixed to real estate or other goods, a description of the real estate or other goods is listed in the portion below labelled "Collateral Description" and the name of the record owner of such real estate or other goods is

n/a

Said real estate is not subject to any construction mortgage. If the Collateral is wholly or partly affixed to real estate or installed in or affixed on other goods, Debtor will, on demand of Secured Party, furnish the latter with a disclaimer or disclaimers, signed by all persons having an interest in the real estate or other goods, of any interest in the Collateral which is prior to Secured Party's interest. Unless the blank spaces in this paragraph are filled in when this Agreement is executed, the Collateral will not be affixed to any real estate or other goods so as to become fixtures on such real estate or accessions to other goods.

(i) If the validity or priority of this Agreement or of any rights, titles, security interests or other interests created or evidenced hereby shall be attacked, endangered or questioned, or if any legal proceedings are instituted with respect thereto, Debtor will give prompt written notice thereof to Secured Party and, at Debtor's own cost and expense, will diligently endeavor to cure any defect which may be developed or claimed, and will take all necessary and proper steps for the defense of such legal proceedings, and Secured Party (whether or not named as a party to legal proceedings with respect thereto) is hereby authorized and empowered to take such additional steps as in its judgment and discretion may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of this Agreement and the rights, titles, security interests and other interests created or evidenced hereby, and all expenses so incurred of every kind and character shall be a demand obligation owing by Debtor and the party incurring such expenses shall be subrogated to all rights of the person receiving such payment.

(j) Debtor will, on request of Secured Party, (i) promptly correct any defect, error or omission which may be discovered in the contents of this Agreement or in any other instrument executed in connection herewith or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further security agreements, financing statements and continuation statements) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Agreement and

\*; that the Collateral is presently located in Texas and that Debtor shall notify Secured Party in writing prior to and in the event that Debtor, its agent or its lessee moves the Collateral outside the State of Texas;

such other instruments, and to subject to the security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the then Collateral; and (iii) execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by Secured Party to protect the security interest hereunder against the rights or interests of third persons, and Debtor will pay all costs connected with any of the foregoing.

(k) Notwithstanding the security interest in proceeds granted herein, Debtor will not sell, lease, exchange, lend, rent, assign, transfer or otherwise dispose of all or any part of the Collateral or any interest therein or permit the title to the Collateral, or any interest therein, to be vested in any other party, in any manner whatsoever, by operation of law or otherwise, without the prior written consent of Secured Party.

(l) To the extent not prohibited by law, Debtor will pay, or reimburse Secured Party for, all costs and expenses, of every character, incurred or expended from time to time (including, but not limited to, the fees and expenses of counsel for Secured Party) in connection with the negotiation, preparation, execution, filing, recording, refiling and re-recording of this Agreement and all related financing statements and the making, servicing and collection of the indebtedness secured hereby; any and all stamp, mortgage and recording taxes; the costs of any title insurance or lien insurance purchased by Secured Party in connection herewith; all costs of negotiation, preparation, execution and delivery of any and all amendments, modifications, supplements, consents, waivers or other documents or writings relating to the transactions contemplated by this Agreement; and all costs (including attorneys' fees) of reviewing title opinions and security opinions relating to the indebtedness secured hereby. Debtor will reimburse Secured Party for all amounts expended by Secured Party to satisfy any obligation of Debtor under this Agreement or to protect the Collateral. In addition, whether or not a default shall have occurred, Debtor will pay, or reimburse Secured Party for, all costs and expenses, of every character incurred or expended from time to time in connection with the evaluation, monitoring, administration and protection of the Collateral and the exercise by Secured Party of any of its rights and remedies hereunder or at law (including, but not limited to, all appraisal fees, consulting fees, brokerage fees and commissions, insurance premiums, Uniform Commercial Code search fees, fees incident to title searches and reports, investigation costs, escrow fees, attorneys' fees, legal expenses, fees of auditors and accountants, court costs, fees of governmental authorities, auctioneer fees and expenses, and all fees and expenses incurred in connection with the marshalling, guarding, management, operation, removal, maintenance, cleanup, storage, auction and liquidation of the Collateral). Any amount to be paid or reimbursed by Debtor to Secured Party shall be a demand obligation owing by Debtor to Secured Party and, to the extent not prohibited by law, shall bear interest from the date of expenditure by Secured Party until paid at the same rate provided for past-due principal and interest in the principal obligation (the "Past Due Rate"). The principal obligation shall be (1) the note secured hereby; (2) if more than one note is secured hereby, the note with the largest face amount; and (3) if no note is secured hereby, the obligation with the largest face amount.

(m) Debtor shall account fully and faithfully for and, if Secured Party so elects, shall promptly pay or turn over to Secured Party the proceeds in whatever form received from disposition in any manner of any of the Collateral, except as otherwise specifically authorized herein. Debtor shall at all times keep the Collateral and its proceeds separate and distinct from other property of Debtor and shall keep accurate and complete records of the Collateral and its proceeds.

(n) The Collateral will be used in the business of Debtor and shall remain in Debtor's possession or control at all times at Debtor's risk of loss at Debtor's location as stated herein and at such other places as Debtor may specify in writing to Secured Party.

(o) Debtor will not change its address, location, name, identity or corporate structure without notifying Secured Party of such change in writing at least thirty (30) days prior to the effective date of such change.

(p) Debtor shall furnish Secured Party all such information as Secured Party may request with respect to the Collateral.

(q) If Secured Party should at any time be of the opinion that the Collateral is not sufficient or has declined or may decline in value, or should Secured Party deem payment of Debtor's obligations to be insecure, then Secured Party may call for additional Collateral satisfactory to Secured Party, and Debtor promises to furnish such additional security forthwith. The call for additional security may be oral or by telegram or by United States Postal Service addressed to the address of Debtor shown at the beginning of this Agreement.

- 4.2. Debtor agrees that if Debtor fails to perform any act or to take any action which hereunder Debtor is required to perform or take, or to pay any money which hereunder Debtor is required to pay, Secured Party, in Debtor's name or in its own name, may but shall not be obligated to perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Secured Party and any money so paid by Secured Party, shall be a demand obligation owing by Debtor to Secured Party, and Secured Party, upon making such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment. Any amounts due and owing by Debtor to Secured Party pursuant to this Agreement shall bear interest from the date of expenditure until paid at the Past Due Rate and shall be secured by this Agreement and by any other instrument securing the secured indebtedness.

#### SECTION V. EVENTS OF DEFAULT.

Debtor shall be in default under this Agreement upon the happening of any of the following events or conditions, herein called an "Event of Default":

(a) Debtor's failure to pay when due any of the secured indebtedness; or

(b) default by Debtor in the punctual performance of any of the obligations, covenants, terms or provisions contained or referred to in this Agreement, in any other instrument securing the secured indebtedness or in any note secured hereby; or

(c) any warranty, representation or statement contained in this Agreement or made or furnished to Secured Party by or on behalf of Debtor in connection with this Agreement or to induce Secured Party to make a loan to Debtor, shall prove to have been false or misleading in any respect when made or furnished; or

(d) loss, theft, substantial damage, destruction, sale or encumbrance of or to any of the Collateral, or the making of any levy, seizure or attachment thereof or thereon; or

(e) Debtor's death, dissolution, termination of existence, insolvency or business failure; the failure of Debtor or of any guarantor or surety for Debtor generally to pay its debts as they come due; the appointment of a receiver, trustee, custodian or liquidator of all or any part of the property of Debtor; an assignment for the benefit of creditors of Debtor; the calling of a meeting of creditors of Debtor; or the commencement of any proceeding under any bankruptcy, insolvency or reorganization laws by or against Debtor or any guarantor or surety for Debtor; or

(f) any statement of the financial condition of Debtor or of any guarantor, comaker, surety or endorser of any liability of Debtor submitted to Secured Party by Debtor or any such guarantor, comaker, surety or endorser shall prove to be false or misleading in any respect; or

(g) any guarantor, comaker, surety or endorser for Debtor defaults in any obligation or liability; or

(h) any adverse material change shall occur in the assets, liabilities, financial condition, business operations, affairs or circumstances of Debtor.

#### SECTION VI. REMEDIES IN EVENT OF DEFAULT.

6.1. Upon the occurrence of an Event of Default, or if Secured Party shall deem payment of Debtor's obligations to be insecure, and at any time thereafter, Secured Party shall have the option of declaring without notice to any person, all indebtedness secured hereby, principal and accrued interest, to be immediately due and payable.

6.2. Upon the occurrence of an Event of Default, or if Secured Party shall deem payment of Debtor's obligations to be insecure, and at any time thereafter, Secured Party is authorized to take possession of the Collateral and of all books, records and accounts relating thereto, and to exercise without interference from Debtor any and all rights which Debtor has with respect to the management, possession, operation, protection or preservation of the Collateral, including the right to rent the same for the account of Debtor and to deduct from such rents all costs, expenses and liabilities of every character incurred by Secured Party in collecting such rents and in managing, operating, maintaining, protecting or preserving the Collateral, and to apply the remainder of such rents on the indebtedness secured hereby in such manner as Secured Party may elect. All such costs, expenses and liabilities incurred by Secured Party in collecting such rents in managing, operating, maintaining, protecting or preserving such properties, if not paid out of such rents as hereinabove provided, shall constitute a demand obligation owing by Debtor and shall bear interest from the date of expenditure until paid at the Past Due Rate, all of which shall constitute a portion of the secured indebtedness. If necessary to obtain the possession provided for above, Secured Party may invoke any and all legal remedies to dispossess Debtor, including specifically one or more actions for forcible entry and detainer. In connection with any action taken by Secured Party pursuant to this paragraph 6.2., Secured Party shall not be liable for any loss sustained by Debtor resulting from any failure to let the Collateral, or any part thereof, or from other act or omission of Secured Party in managing the Collateral unless such loss is caused by the willful misconduct and bad faith of Secured Party, nor shall Secured Party be obligated to perform or discharge any obligation, duty or liability under any lease agreement covering the Collateral or any part thereof, or under or by reason of this instrument or the exercise of rights or remedies hereunder.

6.3. Upon the occurrence of an Event of Default, or if Secured Party shall deem payment of Debtor's obligations to be insecure, and at any time thereafter, Secured Party shall have all the rights of a secured party after default under the Uniform Commercial Code of Texas and in conjunction with, in addition to or in substitution for those rights and remedies provided for herein:

(a) Secured Party may enter upon Debtor's premises to take possession of, assemble and collect the Collateral or to render it unusable; and

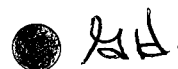
(b) Secured Party may require Debtor to assemble the Collateral and make it available at a place Secured Party designates which is mutually convenient to allow Secured Party to take possession or dispose of the Collateral; and

(c) Written notice mailed to Debtor as provided herein ten (10) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; and

(d) It shall not be necessary that the Collateral or any part thereof be present at the location of such sale; and

(e) Prior to application of proceeds of disposition of the Collateral to the secured indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the attorneys' fees and legal expenses incurred by Secured Party, Debtor to remain liable for any deficiency; and

(f) The sale by Secured Party of less than the whole of the Collateral shall not exhaust the rights of Secured Party hereunder, and Secured Party is specifically empowered to make successive sale or sales hereunder until the whole of the Collateral shall be sold; and, if the proceeds of such sale of less than the whole of the Collateral shall be less than the aggregate of the indebtedness secured hereby, this Agreement and the security interest created hereby shall remain in full force and effect as to the unsold portion of the Collateral just as though no sale had been made; and



(g) In the event any sale hereunder is not completed or is defective in the opinion of Secured Party, such sale shall not exhaust the rights of Secured Party hereunder and Secured Party shall have the right to cause a subsequent sale or sales to be made hereunder; and

(h) Any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the indebtedness, or as to the occurrence of any default, or as to Secured Party having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and the properties to be sold having been duly given, or as to any other act or thing having been duly done by Secured Party, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(i) Secured Party may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Secured Party, including the sending of notices and the conduct of sale, but in the name and on behalf of Secured Party.

6.4. All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any other instrument securing the payment of the secured indebtedness, or any part thereof, or otherwise benefiting Secured Party, and the resort to any remedy provided for hereunder or under any such other instrument or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

6.5. Secured Party may resort to any security given by this Agreement or to any other security now existing or hereafter given to secure the payment of the secured indebtedness, in whole or in part, and in such portions and in such order as may seem best to Secured Party in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits or security interests evidenced by this Agreement.

6.6. To the full extent Debtor may do so, Debtor agrees that Debtor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Debtor, for Debtor, Debtor's heirs, devisees, representatives, receivers, trustees, successors and assigns, and for any and all persons ever claiming any interest in the Collateral, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of the assets of Debtor, including the Collateral, or to a sale in inverse order of alienation in the event of foreclosure of the security interest hereby created.

#### SECTION VII. ADDITIONAL AGREEMENTS.

7.1. If all of the secured indebtedness be paid as the same becomes due and payable, and if all of the covenants, warranties, undertakings and agreements made in this Agreement are kept and performed, then and in that event only, all rights under this Agreement shall terminate and the Collateral shall become wholly clear of the security interest evidenced hereby, and such security interest shall be released by Secured Party in due form at Debtor's cost.

7.2. Secured Party may waive any default without waiving any other prior or subsequent default. Secured Party may remedy any default without waiving the default remedied. The failure by Secured Party to exercise any right, power or remedy upon any default shall not be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Secured Party of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Debtor therefrom shall in any event be effective unless the same shall be in writing and signed by Secured Party and then such waiver or consent shall be effective only in the specific instances, for the purpose for which given and to the extent therein specified. No notice to nor demand on Debtor in any case shall of itself entitle Debtor to any other or further notice of demand in similar or other circumstances. Acceptance by Secured Party of any payment in an amount less than the amount then due on any secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default hereunder.

7.3. Secured Party may at any time and from time to time in writing (a) waive compliance by Debtor with any covenant herein made by Debtor to the extent and in the manner specified in such writing; (b) consent to Debtor doing any act which hereunder Debtor is prohibited from doing, or consent to Debtor failing to do any act which hereunder Debtor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Collateral or any interest therein from the security interest of this Agreement; or (d) release any party liable, either directly or indirectly, for the secured indebtedness or for any covenant herein or in any other instrument now or hereafter securing the payment of the secured indebtedness, without impairing or releasing the liability of any other party. No such act shall in any way impair the rights of Secured Party hereunder except to the extent specifically agreed to by Secured Party in such writing.

7.4. The security interest and other rights of Secured Party hereunder shall not be impaired by an indulgence, moratorium or release granted by Secured Party, including but not limited to (a) any renewal, extension or modification which Secured Party may grant with respect to any secured indebtedness; (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Secured Party may grant in respect of any item of the Collateral, or any part thereof or any interest therein; or (c) any release or indulgence granted to any endorser, guarantor, comaker or surety of any secured indebtedness.

7.5. A carbon, photographic or other reproduction of this Agreement or of any financing statement relating to this Agreement shall be sufficient as a financing statement.

7.6. Debtor will cause all financing statements and continuation statements relating hereto to be recorded, filed, re-recorded and refilled in such manner and in such places as Secured Party shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

7.7. In the event the ownership of the Collateral or any part thereof becomes vested in a person other than Debtor, Secured Party may, without notice to Debtor, deal with such successor or successors in interest with reference to this Agreement and to the indebtedness secured hereby in the same manner as with Debtor, without in any way vitiating or discharging Debtor's liability hereunder or on the indebtedness secured hereby. No sale of the Collateral, no forbearance on the part of Secured Party and no extension of the time for the payment of the indebtedness secured hereby given by Secured Party shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Debtor hereunder or for the payment of the indebtedness secured hereby or the liability of any other person hereunder or for the payment of the indebtedness secured hereby, except as agreed to in writing by Secured Party.

7.8. To the extent that proceeds of the note or other evidence of the secured indebtedness are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Collateral, such proceeds have been advanced by Secured Party at Debtor's request and Secured Party shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

7.9. If any part of the secured indebtedness cannot be lawfully secured by this Agreement, or if any part of the Collateral cannot be lawfully subject to the security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Agreement.

7.10. Secured Party may assign this Agreement so that the assignee shall be entitled to the rights and remedies of Secured Party hereunder and in the event of such assignment, Debtor will assert no claims or defenses it may have against the assignee except those granted in this Agreement.

7.11. Any notice, request, demand or other communication required or permitted hereunder, or under any note, guaranty, loan or agreement or other instrument securing the payment of the secured indebtedness (unless otherwise expressly provided herein), shall be given in writing by delivering same in person to the intended addressee, or by United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, or by prepaid telegram (provided that such telegram is confirmed by mail in the manner previously described), sent to the intended addressee at the address shown herein, or to such different address as the addressee shall have designated by written notice sent in accordance herewith and actually received by the other party at least ten (10) days in advance of the date upon which such change of address shall be effective.

7.12. This Agreement shall be binding upon Debtor, and the heirs, devisees, representatives, receivers, trustees, successors and assigns of Debtor, including all successors in interest of Debtor in and to all or any part of the Collateral, and shall inure to the benefit of Secured Party and the successors and assigns of Secured Party. All references in this Agreement to Debtor or Secured Party shall be deemed to include all such successors and assigns.

7.13. Secured Party in its discretion may, whether or not any of the indebtedness secured hereby be due, in its name or in the name of Debtor or otherwise, demand, sue for, collect or receive any money or other property at any time payable or receivable on account of or in exchange for, or make any compromise settlement deemed desirable with respect to, any of the Collateral, but Secured Party shall be under no obligation so to do.

7.14. Whenever possible, each provision of this Security Agreement shall be interpreted in such manner as to be effective and valid under applicable law. A determination that any provision of this Security Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Security Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

7.15. Secured Party may, by any employee or employees it designates, execute, sign, endorse, transfer or deliver in the name of Debtor, notes, checks, drafts or other instruments for the payment of money and receipts or any other documents necessary to evidence, perfect and realize upon the security interests and obligations of this Agreement.

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- 7.16. Notwithstanding anything to the contrary contained herein, if any secured indebtedness shall be indebtedness resulting from an extension of credit to a consumer (as such terms are defined or described in 12 C.F.R. 227, Regulation AA of the Federal Reserve Board) hereinafter referred to as "consumer credit obligation" then the collateral securing any such consumer credit obligation shall not extend to any nonpossessory security interest in household goods which is not a purchase money security interest (as defined in said Regulation AA), and no waiver of any notice herein shall be construed under any circumstances to extend to any waiver of notice which is prohibited by Regulation AA.
- 7.17. The term "Debtor" as is used in this Agreement shall be construed as singular or plural to correspond with the number of persons executing this Agreement as Debtor. The pronouns used in this Agreement are in the neuter gender but shall be construed as feminine or masculine as occasion may require. "Secured Party" and "Debtor" as used in this Agreement include the heirs, devisees, executors or administrators, successors, representatives, receivers, trustees and assigns of those parties.
- 7.18. If more than one person executes this Agreement as Debtor, their obligations under this Agreement shall be joint and several.
- 7.19. The section headings appearing in this Agreement have been inserted for convenience only and shall be given no substantive meaning or significance whatever in construing the terms and provisions of this Agreement. Terms used in this Agreement which are defined in the Texas Uniform Commercial Code are used with the meanings as therein defined.
- 7.20. This Agreement shall be governed by and construed in accordance with the laws of the state of Texas and the United States of America.

### COLLATERAL DESCRIPTION

The Collateral of this Security Agreement is of the following description:

One (1) Locomotive Serial #SP 1337 together with all engines and all proceeds derived therefrom, including, but not limited to, all income from any rental agreement, lease agreement and/or any management contract to which such locomotive is made subject.

EXECUTED as of the 13th day of April, 1989.

SIGNATURE(S) OF DEBTOR:



*George Hedge*

George Hedge, President  
George Hedge Contractors, Inc.

ACCEPTED BY:

Texas Commerce Bank National Association

By *Bill Walterman*

Bill Walterman, Senior Vice President

STATE OF TEXAS

COUNTY OF HARRIS

On this 13th day of April, 1989, before me personally appeared, George Hedge, to me personally known, who being by me duly sworn, says that he is the President of George Hedge Contractors, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Susan McBee King  
Signature of Notary

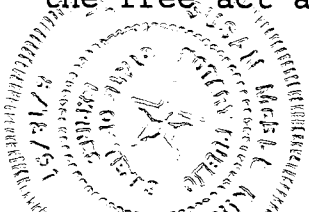
My Commission Expires:

8-18-91

STATE OF TEXAS

COUNTY OF HARRIS

On this 13th day of April, 1989, before me personally appeared, Bill Waltermann, to me personally known, who being by me duly sworn, says that he is the Senior Vice President of Texas Commerce Bank National Association, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Susan McBee King  
Signature of Notary

My Commission Expires:

8-18-91